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14 ROWLAND MARCUS ANDRADE

15 **IN UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **SAN FRANCISCO DIVISION**

18
19 THE UNITED STATES OF AMERICA,) Case No. 3:20-cr-00249-RS-LBx
Plaintiff,)

20 vs.) **DEFENDANT'S BRIEF IN RESPONSE
TO THE COURT'S SEPTEMBER 2, 2024
ORDER**
21 ROWLAND MARCUS ANDRADE,)
Defendant.)
22) Judge: Hon. Laurel Beeler
23) Hearing Date: September 12, 2024
24) Time: 10:30 am
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1 After “no one complied with the [August 1] order to provide Mr. Levin’s contact
 2 information” to defense counsel,¹ the Court, on September 2, 2024, ordered that defense counsel
 3 – using an email address for Levin from discovery – serve by email the Levin subpoena, the
 4 court’s August 1 and September 2 orders, and notice of the September 12 hearing (including the
 5 Zoom information). Discovery Order, Dkt. #347 at 4:8-11 (Sept. 2, 2024). The Court requested
 6 that defense counsel copy Mr. Levin’s former counsel on the email and file proof of service
 7 “including a representation, if it is accurate, that the email did not bounce back.” *Id.* at 4:11-12.
 8 Mr. Andrade’s counsel has complied fully with the Court’s order. *See* Proof of Service,
 9 including the declaration of Kerrie Dent that her emails to Mr. Levin on September 3 and
 10 September 4 did not bounce back. Dkt. #350 (Sept. 4, 2024).

11 The Court’s September 2 order stated that, after the above “concern about notice is
 12 addressed,” the parties could “provide suggestions about the court’s proposed taint-team/highly
 13 confidential review procedures.”² *Id.* at 5:8-9. The remainder of this filing responds to the
 14 Court’s invitation.

15 *First*, the government should play no role in the review of Mr. Levin’s phone. This
 16 Court’s many rulings have shown the government to be an unreliable arbiter of what is material
 17 to the preparation of the defense – and the need for repeated motions demonstrates that the
 18 government has not changed its approach in response to this Court’s rulings. In any event,
 19 although it has not adhered to this position when doing so did not serve its interests, the

20
 21 ¹ The Court’s August 1, 2024 Order stated in part: “By Friday, August 23, 2024, absent any objection by Mr. Levin,
 22 the government must produce an image of the phone to the defense. The government must serve a copy of this order
 23 by email on Mr. Levin’s former attorney, who presumably has contact information for Mr. Levin, including an email
 24 address. The court would appreciate it if that attorney would email Mr. Levin this order and file proof of service
 25 (through the government or the defense, who can handle the efilings). ***Mr. Levin’s contact information must be***
 26 ***provided to the defense***, who also can serve a copy of this order and a subpoena by email (if Mr. Levin is out of the
 27 country) and then file proof of service (including a representation, if true, that the email did not bounce back). ***If Mr.***
 28 ***Levin wants to object to the production of the image, he must do so by August 22, 2024***. Discovery Order, Dkt.
 #332 at 2:11-20 (Aug. 1, 2024) (emphasis added).

2 ² The September 2 order also requested that the parties file a copy of the government’s taint team procedures.
 Discovery Order, Dkt. #347 at 5:4-8. Defense counsel looked but was unable to locate a copy of the government’s
 taint team procedures in its discovery database.

1 government has consistently proclaimed to the Court that it cannot lawfully do anything with any
 2 part of Levin's devices not covered by its search warrant, and the review the Court envisions
 3 would require it to do so.

4 *Second*, Mr. Andrade accepts the Court's suggestion that the review of Levin's device –
 5 which we understand to include privilege (taint) as well as Mr. Levin's privacy interests – be
 6 performed by a third party vendor.³ There are a number of options, including an e-discovery
 7 service such as Relativity, or a private company that performs taint reviews (such as JS Held or
 8 First Legal), or an independent law firm selected by the Court from the CJA panel.⁴

9 *Finally*, Mr. Andrade appreciates the time the Court has devoted to ensure that he
 10 receives the discovery to which he is entitled to prepare his defense, and he asks that the Court
 11 select a method of review that is efficient and that can proceed without delay. The Levin devices
 12 were first requested on July 15, 2022, and the Court first ordered their production on April 7,
 13 2023.⁵ Discovery Order, Dkt. #165 (Apr. 7, 2023). This is the twenty-fourth brief the parties
 14 have written regarding production of Levin's devices. The trial date is rapidly approaching, and
 15 Mr. Andrade expects that the Levin devices will not only contain exculpatory evidence but also
 16 leads to still further helpful evidence – leads that will take time to pursue, especially given that
 17 many of the leads will be outside the United States.

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21 ³ Dkt. #347 at 4:26. By accepting the Court's suggestion, Mr. Andrade does not mean to waive his argument that the
 22 record already establishes that Mr. Levin has abandoned the devices and therefore has no privacy, privilege, or other
 23 interests left to protect, and that the government failed to comply with the deadlines in the Court's August 1 Order.
 24 But the Court's September 2 Order does not appear to accept that argument and we are responding to the September
 25 2 Order on its terms.

26 ⁴ Given that any of these possibilities could entail considerable cost, defense counsel suggests that they could put
 27 together a protocol for the Court's approval and have a team of lawyers at King & Spalding conduct the review. This
 28 alternative would obviate the need to pay for the review and also likely would expedite the process.

29 ⁵ Defense counsel has now served Mr. Levin with a subpoena for his iPad and iPhone. The Court's August 1 and
 30 September 2 Orders refer only to Mr. Levin's phone, presumably because the government had argued that since it
 31 had never accessed the iPad, it could not be ordered to produce an image of it. If Mr. Levin has abandoned his iPad
 32 and his iPhone, both devices should be produced pursuant to the Rule 17(c) subpoena. There may already be a post-
 33 taint image with privileged materials removed from the iPhone.

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2 Respectfully submitted,
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DATED: September 5, 2024

KING & SPALDING LLP

5 By: /s/ Michael J. Shepard
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ROWLAND MARCUS ANDRADE